

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JIMMY L. MARTINDALE)	
Claimant)	
VS.)	
)	Docket Nos. 202,496 & 208,690
CESSNA AIRCRAFT COMPANY)	
Respondent)	
Self-Insured)	

ORDER

Claimant requested review of the Award dated March 3, 1997, and the Award Supplement dated September 8, 1997, both entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument in Wichita, Kansas, on February 13, 1998.

APPEARANCES

John C. Nodgaard of Wichita, Kansas, appeared for the claimant. Edward D. Heath, Jr., of Wichita, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The parties' stipulations and the record are listed in the Award. In addition, the record includes the September 30, 1996, deposition of Nancy A. Didriksen, Ph.D.

ISSUES

Claimant alleges he has multiple chemical sensitivity and either a 100 percent work or permanent total disability as the result of chemical exposure he experienced while working for the respondent. The Administrative Law Judge denied claimant's request for benefits. Claimant requests the Appeals Board to review the following issues:

- (1) Did claimant either sustain personal injury by accident or develop an occupational disease that arose out of and in the course of employment with respondent?
- (2) What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

- (1) Claimant worked for the respondent from December 1992 through September 7, 1994, as a special equipment maker which required him to work around various chemicals.
- (2) Claimant has a history of smoking. And, according to an alcohol assessment completed by Behavioral Consultants in June 1994, claimant would drink to intoxication three to five times per week. Claimant now reports he no longer smokes or drinks.
- (3) Among others, claimant sought evaluation and treatment from Alfred R. Johnson, D.O., of the Environmental Health Center in Dallas, Texas. He saw claimant in January 1995 and diagnosed petrochemical exposure and hypersensitivity to low levels of those chemicals. Due to the hypersensitivity, he thought claimant was totally disabled. Also, he believed claimant had sustained permanent injury to the peripheral nervous system and brain damage as a result of the exposure. Dr. Johnson did not take into account claimant's smoking and drinking histories.
- (4) Dr. Johnson referred claimant for a neuropsychological evaluation by Nancy A. Didriksen, Ph.D., to assess the affects on claimant's neuropsychological and behavioral functioning. She saw claimant in January 1995 and found that he had some neuropsychological deficits. But they were not severe and, compared to the general population, claimant was functioning adequately. She diagnosed depression, anxiety, compromised self-confidence, fatigue, and sleep disorder. Because claimant did not give her a history of prior psychological or physical problems, she attributes those maladies to either chemical exposure or the negative life changes claimant has encountered since falling ill. But she could not say that claimant's condition was permanent or that claimant had brain damage without reevaluating him as she had initially recommended.
- (5) Claimant also presented the testimony of chiropractic internist Michael Taylor, D.C., from Tulsa, Oklahoma. At the time of his deposition, Dr. Taylor was treating claimant with oxidative therapy. He believes claimant was chemically poisoned while working for the respondent.
- (6) Neuropsychologist Mitchel A. Woltersdorf, Ph.D., testified on respondent's behalf. He limits his practice to neuropsychological assessments of people with central nervous system involvement. He examined claimant in November 1996. After re-scoring some of Dr. Didriksen's tests, re-administering some of her tests, and adding others, Dr. Woltersdorf concluded that claimant had no cognitive deficits and did not have multiple chemical sensitivity. He found no signs of toxin exposure or cognitive deficits on neuropsychological testing. But he believes claimant probably has a long-standing personality disorder and may even be malingering.

CONCLUSIONS OF LAW

Claimant's expert witnesses indicate he developed multiple chemical sensitivity and related psychological problems due to chemical exposure at Cessna; respondent's expert testified he did not. Some of the tests suggest claimant may have permanent residual effects from chemical exposure and some indicate he is either exaggerating or even malingering. Unfortunately, the record does not contain an opinion from a neutral health care provider.

Claimant has not met his burden of proving a work-related injury. When considering the entire record, the Appeals Board is not convinced claimant has sustained either physical or psychological injury or has developed multiple chemical sensitivity as a result of working at Cessna. The Appeals Board finds Dr. Woltersdorf's testimony persuasive. Unlike Dr. Didriksen, Dr. Woltersdorf has obtained a doctorate in neuropsychology and is board eligible for certification in that field. And he limits his practice to neuropsychological assessments.

The denial of benefits should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated March 3, 1997, and the Award Supplement dated September 8, 1997, both entered by Administrative Law Judge Jon L. Frobish should be, and hereby are, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John C. Nodgaard, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director